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TITLE: SUBSTANCE ABUSE POLICY	PERSONNEL X ADMINISTRATIVE	RESOLUTION NO: 96-787
EFFECTIVE DATE: June 20, 1996	TYPE: POLICY X PROCEDURE	SUPERSEDES: POLICY # PROCEDURE #

GENERAL

The Board of Lucas County Commissioners is required to comply with the Omnibus Transportation Employee Testing Act of 1991 for the testing of holders of CDL=s (Commercial Driver=s License). The Board of Lucas County Commissioners has an objective to provide an alcohol and prohibited drug-free work environment.

PURPOSE

This policy is promulgated to assure driver fitness for duty and to protect employees and the general public from the risks posed by the use of alcohol and prohibited drugs on the job while operating equipment requiring a Commercial Driver=s License (hereinafter CDL). This policy is also intended to comply with all applicable Federal regulations governing workplace anti-drug programs as well as the Board=s Motor Vehicle Policy.

AUTHORITY

- A) As required by the Omnibus Transportation Employee Testing Act of 1991, the Federal Highway Administration (FHWA) of the U.S. Department of Transportation has enacted 49 CFR Parts 382, 391, 392 and 395 which mandate urine drug testing and breath alcohol testing for all employees who are required to obtain a commercial driver=s license (CDL). The law also prohibits the driving of commercial motor vehicles (MV) when there is a positive test result.
- B) U.S. Department of Transportation has enacted 49 CFR Part 40, which sets standards for the collection and testing of urine and breath specimens. In addition, the DOT has enacted 49 CFR Part 29, The Drug-Free Workplace Act of 1988, which requires the establishment of drug-free workplace policies and the reporting of certain drug-related offenses to the Federal

Transportation Administration (FTA).

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APPLICABILITY

- A. Effective January 1, 1996, this policy applies to all employees within the appointing authority of the Board of Lucas County Commissioners, in positions requiring a CDL.**

All such employees will be subject to alcohol and controlled substances testing in the following circumstances: a) reasonable suspicion testing, b) post-accident testing, c) random testing, and d) return-to-duty testing.

DEFINITIONS

The words and phrases used in this policy are defined as follows:

A) Safety-Sensitive Function

- 1) All time at any facility, owned or otherwise, waiting to be dispatched unless the driver has been relieved from duty by the department. This includes any Aon-call time.**
- 2) All time inspecting equipment as required by the regulations.**
- 3) All driving time as defined by the regulations.**
- 4) All time, other than driving, in any commercial motor vehicle except time spent resting in a sleeper berth.**
- 5) All time loading or unloading a vehicle, supervising or assisting in this process.**
- 6) All time spent performing the requirements specified in Section 392.40 and 392.41 of the regulations as they relate to accidents.**

- 7) All time repairing, obtaining assistance or remaining in attendance of a disabled vehicle.**
- 8) All time spent providing a breath or urine specimen, including travel time to and from the collection site, in order to comply with the random, reasonable suspicion, post-accident or follow-up testing required by this policy when directed by the Board of County Commissioners.**
- 9) Time spent performing any other work in the capacity of, or in the employ or service of, a common contract or private carrier.**
- 10) Time spent performing any compensated work for any non-motor carrier entity.**

B) Illegally Used Controlled Substances or Drugs

Illegally used controlled substances or drugs are any illegal drugs or any substances identified in Schedules I through V of Section 202 of the Controlled Substance Act (21 U.S.C. 812), and further defined by 21 CFR 1300.11 through 1300.15. This includes, but is not limited to, marijuana, amphetamines, opiates, phencyclidine (PCP) and cocaine, as well as any drug not approved for medical use by the U.S. Drug Enforcement Administrator or the U.S. Food and Drug Administration. Illegal use includes use of any illegal drug, misuse of legally prescribed drugs and use of illegally obtained prescription drugs.

C) Legal Drugs

Legal drugs are legally prescribed drugs and non-prescription medications. A **legally prescribed drug** means that an individual has a prescription or other written approval from a physician for the use of a drug in the course of medical treatment. It must include the physician's name, the name of the substance, quantity/amount to be taken and period of authorization.

D) Alcohol

Alcohol means the intoxicating agent in beverage-alcohol, ethyl alcohol, or other low molecular weight alcohol including methyl and isopropyl alcohol.

E) Commercial Motor Vehicle

Commercial motor vehicle means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:

- 1) Has a gross combination weight rate of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds; or**
- 2) Has a gross vehicle weight rating of 26,001 or more points; or**
- 3) Is designed to transport 16 or more passengers, including the driver; or**
- 4) Is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations (49 CFR Part 172, Subpart F).**

F) Driver

Driver means any person who operates a commercial motor vehicle. This includes, but is not limited to: full-time, regularly employed drivers= casual, intermittent or occasional drivers; leased drivers and independent, owner-operator contractors who are either directly employed by or under lease to any employer or who operates a commercial motor vehicle at the direction of or with the consent of an employer.

G) Refusal to Test

Refusal to submit to an alcohol or controlled substances test means that a

driver (1) fails to provide adequate breath for testing without a valid medical explanation after he or she has received notice of the requirement for breath testing in accordance with the provisions of this part, (2) fails to provide adequate urine for controlled substances testing without a valid medical explanation after he or she has received notice of the requirement for urine testing, or (3) engages in conduct that clearly obstructs the testing process.

PROHIBITED CONDUCT FOR CDL EMPLOYEES PERFORMING SAFETY-SENSITIVE FUNCTIONS

A) Prohibited conduct addressed by this policy includes the following:

- 1) Perform a safety-sensitive function while having a breath alcohol concentration of 0.02 or greater.**
- 2) Perform a safety-sensitive function within two (2) hours after using alcohol. No supervisor having actual knowledge that an employee has used alcohol within two (2) hours shall permit an employee to perform or continue to perform safety-sensitive functions.**
- 3) Possess any quantity of alcohol while on duty unless the alcohol is manifested and transported as part of the load. This includes any medicines, both prescription and over-the-counter, that contain alcohol, unless the packaging seal is unbroken.**
- 4) Use alcohol while on duty including lunch periods and breaks.**
- 5) Report or remain on duty when his/her ability to perform assigned functions is adversely affected or when his blood alcohol concentration is 0.04 or greater.**

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- 6) When involved in an accident that requires a post-accident alcohol test, use alcohol within two (2) hours of the accident or prior to submitting for the post-accident test, whichever comes first.**

- 7) Use any substance that indicates that mental functioning, motor skills or judgement may be adversely affected without reporting such to his/her supervisor.**
- 8) Perform a safety-sensitive function when the employee uses controlled substances, except when prescribed by a physician who has determined that the substance will not adversely affect the employee=s ability to safely perform his/her work duties.**
- 9) Perform a safety-sensitive function, if the employee has tested positive for controlled substances.**

SUPERVISOR=S DUTY TO IMPLEMENT POLICY AND REPORT CRIMINAL DRUG CONVICTIONS

- A) Supervisors of county employees subject to this policy shall apply this policy in an unbiased and impartial manner. A supervisor/manager who knowingly disregards the requirements of this policy or who deliberately misuses the policy shall be subject to disciplinary action.**
- B) Supervisor shall report all violations of this policy to the Human Resources Department of the Board of Lucas County Commissioners.**
- C) Supervisor shall record all criminal drug convictions for employees covered by this policy in the employee=s personnel file and report the same to the Human Resources Department of the Board of Lucas County Commissioners.**

TESTING FOR PROHIBITED SUBSTANCES

- A) General Procedures**
 - 1) All employees subject to this policy shall be subject to post-accident, reasonable suspicion, random and return-to-duty testing.**
 - 2) Any employee who is reasonably suspected of being intoxicated, impaired under the influence, or not fit for duty shall be suspended from his/her job duties pending an investigation and verification of his/her condition.**

- 3) The County Commissioners will use the services of a certified Medical Review Officer (MRO) to comply with the testing requirements of the DOT regulations.**
- 4) Testing shall be conducted to assure a high degree of accuracy and reliability using techniques, equipment and laboratory facilities which have been approved by the U.S. Department of Health and Human Services (DHHS). All testing will be conducted consistent with the procedures set forth in 40 CFR Part 40, and as amended.**
- 5) Tests will be conducted for marijuana, cocaine, opiates, amphetamines and phencyclidine. Upon reasonable cause, the county will test for other illegal drugs. In such event, a second urine sample will be provided by the employee.**
- 6) An initial drug screen will be conducted on each specimen. For those specimens that are not negative, a confirmatory Gas Chromatography/Mass Spectrometry (GC/MC) test will be performed. The test will be considered positive if the amounts present are above the minimum thresholds established in 49 CFR 40, as amended.**
- 7) Tests for alcohol concentration will be conducted using a National Highway Traffic Safety Administration (NHTSA) - approved Evidential Breath Testing device (EBT) operated by a trained Breath Alcohol Technician (BAT). If the initial test indicates an alcohol concentration of 0.02 or greater, a second test will be performed to confirm the results of the initial test.**
 - a) An employee who has a confirmed alcohol concentration of greater than 0.02 but less than 0.04 will result in removal from his/her position for twenty-four (24) hours unless a re-test results in a concentration measure of less than 0.02.**
 - b) During the twenty-four (24) hour period of time that an employee has been removed from his/her position, he/she will be in an unpaid status.**

- c) If the employee has a confirmed alcohol concentration of greater than 0.02 but less than 0.04 on any subsequent alcohol test, then he/she shall be subject to disciplinary action, up to and including dismissal.**

- 8) An alcohol concentration of 0.04 or greater will be considered a positive alcohol test and in violation of this policy. Any employee who has a confirmed positive drug or alcohol (0.04 or greater) test will be removed from his/her safety-sensitive position, informed of educational and rehabilitation programs available and evaluated by a substance abuse professional (SAP). Employee assessment by a SAP is detailed in the Discipline Section of this policy.**

B) Procedures for Specific Types of Tests/Testing Events

I) Post-Accident Testing

- a) As soon as practicable following an accident involving a commercial motor vehicle, each driver shall be tested for alcohol or controlled substances, if:**
- 1. He/she was performing safety-sensitive functions with respect to the vehicle if the accident involved the loss of human life; or**
 - 2. He/she receives a citation under state or local law for a moving traffic violation arising from the accident.**

- b) A driver will be tested for alcohol within two (2) hours of an accident. If an alcohol test is not accomplished within two (2) hours of an accident, then a written record shall be made stating the reasons the alcohol test was not promptly administered. If the alcohol test has not been accomplished within eight (8) hours following notification, the county shall stop its attempt to administer the alcohol test and it shall make and retain in the file a record of the reasons the alcohol test was not properly administered.**
- c) If a driver has not submitted a controlled substance test within thirty-two (32) hours of an accident, the county shall stop its attempt to administer the controlled substance test. It shall then make and retain in a file a record of the reasons a controlled substance test was not properly administered.**

- d) A driver who is involved in an accident must refrain from alcohol use for eight (8) hours following an accident or until he/she undergoes a post-accident alcohol test. Drivers who leave the scene of an accident without a justifiable explanation prior to submission to drug and alcohol testing will be considered to have refused the test, and they will be subject to disciplinary action up to and including dismissal.**
- e) A driver who is seriously injured and cannot provide a specimen at the time of the accident shall provide the necessary authorization for obtaining medical reports and other documents which would indicate whether there were any alcohol or controlled substances in his/her system at the time of the accident.**

- f) The Board of Lucas County Commissioners can use, by permission from the Federal Highway Administration, post-accident tests conducted by federal, state or local officials as meeting the requirements of this section under the following conditions:**
- 1. The official must have independent authority to conduct the test.**
 - 2. The test must conform to federal, state, or local requirements.**
 - 3. Alcohol tests require breath samples.**
 - 4. Controlled substance tests require a urine sample.**

2) Random Testing

- a) Except as may be charged by the Federal Highway Administration, the minimum annual percentage rate for random alcohol testing shall be 25 percent of the average number of driver positions. The minimum annual percentage rate for random controlled substances testing shall be 50 percent of the average number of drivers required to have a CDL.**
- b) Employees will only be tested randomly for alcohol when they are performing safety-sensitive functions, immediately prior to, or after performing safety-sensitive functions.**

- c) After an employee has been randomly selected for a test, the employee must immediately proceed to the testing site upon**

notification of being selected.

- d) If an employee who has been randomly selected for a test is on vacation or other pre-approved form of leave, the Commissioners may either select another employee as an alternate or keep the original selection confidential until the employee returns to duty.**

3) Reasonable Suspicion Testing

- a) Alcohol: A driver must submit to urine and/or breath testing when reasonable suspicion exists that the driver has an alcohol concentration between 0.02 and 0.04 or greater or has consumed alcohol within four (4) hours of performing a safety-sensitive function. The county=s Areasonable suspicion≡ must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the driver.**
- b) Controlled Substances: A driver must submit to a controlled substance test when reasonable suspicion exists that a driver has used or is under the influence of controlled substance. The employer=s reasonable suspicion must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the driver and may include indications of the chronic and withdrawal effect of controlled substances.**
- c) Alcohol testing is authorized by this section only if the observations required are made during, just preceding, or just after the period of the work day that the driver is required to be in compliance with this part. A driver may be directed by the employer to only undergo reasonable suspicion testing while the driver is performing safety-sensitive functions, just before the driver is to perform safety-sensitive functions, or just after the driver has ceased performing such functions.**

- d) **Reasonable suspicion determinations will be made by two (2) supervisors, if possible. The employer will provide supervisors with a minimum of 60 minutes of training on alcohol misuse, and a minimum of 60 minutes of training on controlled substance abuse. Training shall include: 1) physical behavior, 2) speech, and 3) performance indicators consistent with alcohol and controlled substance use and misuse.**
- e) **Once an employee has been notified that a reasonable suspicion test will be conducted, it must take place within two (2) hours of the notification. If the test is not accomplished within two (2) hours, a written record shall be made stating the reasons the alcohol test was not promptly administered. If the test has not been accomplished within eight (8) hours following notification, the Board of Commissioners shall stop its attempt to administer the test and make and retain in a file a record of the reasons the alcohol test was not properly administered.**
- f) **A written record shall be made documenting the employee=s conduct with respect to an alcohol and/or controlled substance reasonable suspicion test and must be signed by the supervisors or official who observed the behavior, within twenty-four (24) hours of the observed behavior, or before the results of the controlled substance test are released, whichever is earlier. This confidential report shall be submitted by the department head to the Human Resources Department.**

4) Return-to-Duty Testing

- a) **Before a driver returns to duty requiring the performance of a safety-sensitive function, after engaging in conduct prohibited by the Testing for Prohibited Substances Section of this policy concerning alcohol, the driver shall undergo a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02.**

- b) Before driver returns to duty requiring the performance of a safety-sensitive function, after engaging in conduct prohibited by the Testing for Prohibited Substances Section of this policy, he/she must undergo a return-to-duty controlled substances test with a result indicating a verified negative result for controlled substances use.**

5) Follow-up Testing

- a) Following a determination by a SAP, that a driver is in need of assistance in resolving problems associated with alcohol misuse and/or use of controlled substances, that driver is subject to unannounced follow-up alcohol and/or controlled substances testing as directed by a substance abuse professional.**
- b) Follow-up alcohol testing shall be conducted only when the driver is performing safety-sensitive functions, just before the driver is to perform safety-sensitive functions, or just after the driver has ceased performing safety-sensitive functions.**
- c) There will be a minimum of six (6) follow-up controlled substance and/or alcohol tests in the first twelve (12) months following re-entry to the safety-sensitive (CDL) job. Follow-up testing may be extended for up to sixty (60) months following an employee=s return-to-duty in the safety-sensitive (CDL) position.**

6) Employee-Requested Split Sample Test

- a) Any driver who questions the results of a required drug test may request that an additional test be conducted. This test must be**

conducted at a different testing DHHS-certified laboratory. The test must be conducted on the split sample that was provided at the same time as the original sample. All costs for such testing are paid by the employee, unless the second test invalidates the original test.

- b) The employee=s request for a split sample test must be made within seventy-two (72) hours of notice of the initial test result. Requests after seventy-two (72) hours will only be accepted if the delay was due to documentable facts that were beyond the control of the employee.

REFUSAL TO TEST

- A) Any driver who refuses to comply with a request for testing who provides false information in connection with a test or who attempts to falsify the test results through tampering, contamination, adulteration or substitution shall be subject to disciplinary action up to and including dismissal.

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EMPLOYEE ASSESSMENT AND TREATMENT

- A) Any driver who tests positive for the presence of controlled substances or alcohol above the minimum thresholds set forth in 49CFR Part 40 as amended will be evaluated by a Substance Abuse Professional (SAP). The SAP will evaluate each employee to determine what assistance, if any, the employee needs in resolving problems associated with prohibited substance abuse or misuse. SAP services will be provided by an appropriate certified professional who implements an employee assistance program for the Board of County Commissioners.
- B) The Board of County Commissioners will consider employees who test positively to be medically unqualified and they shall be disqualified from safety-sensitive work until they have been released to return-to-duty by the SAP.

- C) For those seeking treatment, whether voluntarily or by reason of mandatory rehabilitation, the employee benefits that would otherwise be available to the employee shall continue – for example, sick leave, leaves of absence, vacation leave, compensatory leave, Family Medical Leave, and group health insurance benefits.**
- D) If an employee is allowed to return to duty, he/she must follow the rehabilitation program prescribed by the SAP. The employee must pass return-to-duty drug and alcohol tests and unannounced follow-up tests as recommended by the SAP. The costs associated with any treatment for rehabilitation services shall be paid directly by the employee or his/her insurance provider.**
- E) Assessment by a SAP does not shield an employee from disciplinary action or guarantee employment or reinstatement to employment with the Board of County Commissioners.**

EMPLOYEE DISCIPLINE

- A) A driver with an alcohol concentration more than 0.02 or greater or a positive controlled substance test will be subject to disciplinary action up to and including dismissal.**
- B) A driver who is eligible for assessment and treatment will still be subject to dismissal.**
- C) Any driver who refuses to test for alcohol or controlled substances will be subject to dismissal.**
- D) Any employee who refuses or fails to comply with Board of County Commissioners= requirements for treatment, aftercare, or return-to-duty shall be subject to dismissal.**

- E) If a driver is permitted to undergo treatment in lieu of dismissal and he/she**

subsequently tests positive on any alcohol or controlled substance test, he/she will be dismissed.

- F) The Board may hold in abeyance any disciplinary action for employees who test positive the first time, while requiring the employee to successfully complete a drug/alcohol abuse or rehabilitation program approved for such purposes by the SAP, including any after-care requirements of the program. The discipline held in abeyance shall be dropped upon successful completion of the required treatment program, including all aftercare requirements.**

RECORD RETENTION AND RELEASE

- A) A Medical Review Officer (MRO) will serve as the sole custodian of individual test results and will retain individual test results for the time periods listed below:**

- 1) Records maintained for a minimum of five (5) years.**

- a. Records of driver=s alcohol test results indicating an alcohol concentration of 0.02 or greater.**
- b. Records of driver=s verified positive controlled substance test results.**
- c. Documentation of refusals to take required alcohol and/or controlled substances tests.**
- d. Driver evaluations and referrals.**
- e. Annual calendar year summaries of the results of alcohol and controlled substances testing programs.**

- 2) Records maintained for a minimum of two (2) years:**

- a. Records related to the alcohol and controlled substances collection process and training.**

- 3) Records maintained for a minimum of one (1) year:**

- a. Records of negative and canceled controlled substances test results.**

b. Alcohol test results with a concentration of less than 0.02.

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- B) The Human Resources Department will retain personnel records of only the following information:**
- 1. Circumstances prompting test (e.g., random testing, post-accident, reasonable suspicion).**
 - 2. The date of the test.**
 - 3. The location of the test.**
 - 4. The identity of the person or entity conducting the test.**
 - 5. Whether the test finding was positive or negative.**
- C) The Employer will notify incumbent employees of the results of random, reasonable suspicion, and post-accident alcohol and/or controlled substance tests, provided that the results are positive and will also advise the employee what controlled substance was detected or the alcohol level that was discovered.**
- D) The Employer will not release driver testing information retained in this section except upon the written consent of the driver and except:**
- 1. When requested by the Department of Transportation or any state or local officials with regulatory authority over the county or its drivers.**
 - 2. In the event an employee initiates a grievance, hearing, lawsuit or other action as a result of an alcohol and/or controlled substance test**

conducted pursuant to this policy.

- E) The annual calendar year summary of the results of the alcohol and drug testing programs must be completed by March 15th of the following year. This will be completed by the Medical Review Officer and submitted to the Human Resources Department.**

INFORMATION FROM PREVIOUS EMPLOYERS

- A) The Board of County Commissioners may obtain, pursuant to a driver=s written consent, any of the information concerning the driver which is maintained under 49 CFR Parts 40 and 382 by the driver=s previous employers.**

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- B) The Employer shall obtain, pursuant to a driver=s written consent, any of the information concerning the driver which is maintained under 49 CFR Parts 40 and 382 by the driver=s previous employers.**
- C) The information in Paragraph (b) of this section must be obtained and reviewed by the Board of County Commissioners no later than fourteen (14) calendar days after the first time a driver performs safety-sensitive functions for the county, if it is not feasible to obtain the information prior to the driver performing safety-sensitive functions. The Board of County Commissioners will not permit a driver to perform safety-sensitive functions after fourteen (14) days without obtaining the information.**
- D) If the driver stops performing safety-sensitive functions for the employer before expiration of the fourteen (14) day period or before the Board of County Commissioners has obtained the information in Paragraph (b) of this section, the employer must still obtain the information.**
- E) The Board of County Commissioners will provide to each of the driver=s**

employers within the two (2) years the driver=s specific, written authorization for release of the information in Paragraph (b).

- F) The release of any information under this part may take the form of personal interviews, telephone interviews, letters, or any other method of obtaining information that ensures confidentiality. The Board of County Commissioners will maintain a written, confidential record with respect to each past employer contacted.**
- G) The Board of County Commissioners will not use a driver to perform safety-sensitive functions if it obtains information on the driver=s alcohol test with a concentration of 0.04 or greater, verified positive controlled substances test results or refusal to be tested by the driver without obtaining information on a subsequent substance abuse professional evaluation and/or determination under Section 382.401(c)(4) and compliance with Section 382.309.**

APPROVED BY:

DATE: